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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ROOSEVELT JAQUAN ROBINSON,

Defendant and Appellant.

A141919

(Solano County Super. Ct.
Nos. VCR214151, VCR217823)

Defendant's counsel filed an opening brief in which she raised no issues and asked this court for an independent review of the record to determine whether there are any arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant has filed a supplemental brief contending that: (1) a photographic lineup was unconstitutionally suggestive; (2) juror bias contributed to the verdict; and (3) he was denied his right to counsel at a live lineup.

I. FACTUAL BACKGROUND

On March 7, 2012, a felony complaint was filed in Case No. VCR214151, charging defendant with twelve counts. Prior to the preliminary hearing, the trial court granted defendant's *Faretta*¹ request to represent himself. Following the preliminary hearing, an information was filed on April 16, 2013 charging defendant with eleven counts: Counts 1 through 3 and counts 6 and 7 alleged second degree robbery (Pen.

¹ *Faretta v. California* (1975) 422 U.S. 806.

Code,² §211), with the allegation that the offense was a serious and violent felony (§§ 1192.7, subd. (c), 667.5, subd. (c)). Counts 4 and 5 alleged false imprisonment by violence (§ 236). Counts 8 through 10 alleged attempted second degree robbery (§§ 664/211) with the allegation that the offense was a serious and violent felony (§§ 1192.7, subd. (c); 667.5, subd. (c)). The information also alleged as to counts 1 through 10 that in the commission or attempted commission of the alleged offenses, defendant personally used a handgun (§§ 1203.06, subd. (a)(1), 12022.5, subd. (a)), causing the offenses to be serious and violent felonies (§§ 1192.7, subd. (c), 667.5, subd. (c)). Further, as to counts 1 through 3 and counts 6 through 10, the information alleged that defendant personally used a handgun (§§ 12022.5, subd. (a); 12022.53, subd. (b)). Count 11 alleged that defendant, a felon, possessed a firearm in violation of section 29800, subdivision (a)(1). In addition, the information alleged as to all counts that defendant suffered two prior “strike” convictions (§ 667.5, subd. (b)).

On April 26, 2013, a complaint charging three felony counts was filed in Case No. VCR217611. Defendant requested counsel to represent him in this separate case. The trial court appointed the public defender’s office to represent defendant. On the People’s motion, the court dismissed Case No. VCR217611 on June 17, 2013.

On May 24, 2013, defendant moved to set aside the information in Case No. VCR214151 pursuant to section 995 on the ground that he was denied discovery of videotape evidence prior to the preliminary hearing. The court did not rule on this motion, but the motion was later renewed.

On June 12, 2013, an information was filed in Case No. VCR217823 charging defendant with two counts of second degree robbery. The information alleged that the offenses were serious and violent felonies within (§§ 1192.7, subd. (c), 667.5, subd. (c)). The information also alleged that defendant personally used a handgun in the commission of the offenses and that he suffered two prior “strike” convictions. The court granted defendant’s *Faretta* motion to represent himself in this case.

² All further statutory references are to the Penal Code.

On June 28, 2013, the court granted defendant's request for counsel to be appointed to represent him in Case No. VCR214151. That same day, the People moved to consolidate Case No. VCR214151 and Case No. VCR217823. Defendant opposed the motion, arguing that consolidation of the two cases would infringe on his right to self-representation in Case No. VCR217823. In a reply memorandum, the People asserted that defendant's right to represent himself would not be infringed as he would still have the right to exercise either his right to self-representation or to have appointed counsel. On November 22, 2013, the court granted the motion to consolidate Case No. VCR217823 and Case No. VCR214151, with the latter case being the lead case. The court found that there was cross-admissibility between the counts, no undue prejudice, and one count was not exceptionally stronger than the others.

On September 24, 2013, defendant's counsel filed a new section 995 motion arguing the same discovery issue as in defendant's earlier motion, as well as arguing that defendant was denied the right of self-representation at the preliminary hearing and that insufficient evidence existed to support a finding that defendant committed counts 7 and 9. The court denied the motion, finding that defendant was given the opportunity to view the videotape evidence but elected to go forward with the preliminary hearing and thus waived the issue. The court granted the People's motion to dismiss counts 9 and 11.

On November 25, 2013, defendant again requested that he be allowed to represent himself in the consolidated cases. The court granted the request.

Defendant thereafter filed a motion for a physical "live" identification lineup. On January 10, 2014, the court granted the motion. The lineup was conducted on January 30, 2014.

The jury trial commenced on February 5, 2014. The evidence presented to the jury showed the following:

1. Meadows Video robberies and false imprisonment counts

Maricris Fronda testified that on December 13, 2011, she was working at Meadows Video in Vallejo. The location also houses a Western Union. There was one cash register for the video store and a separate one for Western Union. Fronda was

behind the counter when an African American man approached her and said, “Don’t look at me.” He was wearing a black hooded sweatshirt with the hood up and dark blue or black pants. The man had a black handgun in his hand and demanded money. Fronda gave the man the money, approximately \$400, from the cash register.

On December 22, 2011, Fronda was working with Andrea Pliego in the store when the same man from the first robbery approached her. He told her to go to the counter and pointed to the register with a black handgun. He was wearing black clothing and the same black hooded sweatshirt from the first robbery. Fronda took the money out of the cash register and put it in the plastic bag that the man was carrying. The man then directed her to the back room and demanded more money. She did not get the money for him until he said, “Someone is going to get shot in here.” She testified that she gave him the money because she did not want to get hurt. She and Pliego stayed in the back room because they were following the man’s instructions.

Frona testified the man had a round “dot” tattoo under his eye. She identified defendant in court as the perpetrator. She also had identified defendant in a photographic lineup shortly after the incident.

Andrea Pliego testified that she was working with Fronda at Meadows Video on December 22, 2011 and reiterated Fronda’s account of the robbery. She noticed that the man with the black handgun was “clocking” it when he was at the register and when they were in the back room. She did not get a clear look at the man’s face because he told her not to look at him. He also told her and Fronda to stay in the back room and not to move.

2. Metro PCS robbery

Seyed Hesam Manafi was working at a Vallejo Metro PCS store with Carina Ramirez, his co-worker, on December 22, 2011. An African American man came into the store holding a gun. He approached Manafi and said, “Give me the money.” The man was making a clicking noise with the gun. The man handed Manafi a plastic bag and told him to put the money in it. Manafi took the money from the cash register and gave it to him. The man asked for more money and directed Manafi and Ramirez to the back room. The safe was locked, but the man took about seven cell phones. Manafi did

not get a good look at the man. He described him as having dark skin and a tattoo, like a teardrop, below his eye. Manafi gave the police a surveillance videotape from the store. The videotape was played for the jury.

Ramirez testified that she was working with Manafi at the Metro PCS store on December 22, 2011. She was at the front desk when she saw defendant, an African American, enter the store. He was wearing a black sweatshirt with the hood over his head and had a teardrop tattoo to the side of his eye. Defendant pulled out a black gun and “clocked” it, making a clicking sound. Defendant directed them to put their hands up and to give him the money. He took out a bag and told them to put the money in the bag. Defendant then took them to the back room and demanded that they give him the cell phones. He took the phones and fled.

Ramirez subsequently saw a YouTube music video and recognized defendant in it. She showed the video to the police. She also identified defendant in a photographic lineup about a month after the incident and at trial.

3. Little Maya Bakery robbery

On January 4, 2012, Veronica Betanzos was working behind the counter at the Little Maya Bakery in Vallejo with her sister, Laura Betanzos. Between 2:00 p.m. and 3:00 p.m., defendant, wearing a black sweater with a hood, entered the bakery. He had a teardrop tattoo near his eye. As defendant approached the counter, he pulled out a gun and demanded money. The gun was making a clicking noise. Veronica Betanzos gave him the money from the register. Defendant then fled. Veronica Betanzos identified defendant in a photographic lineup taken a few days after the robbery and at trial. She was unable to identify the robber in a physical lineup conducted on January 30, 2014, two years after the robbery.

Laura Betanzos testified that she was with her sister, Veronica Betanzos, at the bakery when they were robbed on January 4, 2012. She identified defendant as the perpetrator at trial. After defendant left the bakery, she saw that he ran toward the cleaners next door. About five to ten minutes later, Laura Betanzos went outside and spoke with the owner of the cleaners. He told her that he had also been robbed.

4. Vallejo Cleaners attempted robbery

Yong Park testified that on January 4, 2012, he was working at Vallejo Cleaners, a dry cleaning business he owns in Vallejo. His wife and an employee were also working that day. He was working in the back of the shop when he heard some noise. He went to the front of the shop and saw an African American man wearing a hooded sweatshirt covering his head and holding a gun. The man told Park he would count to five and “if you don’t give me the money, I’m going to shoot you.” The man tried to open a cash register that was next to the drive-through window. Park opened the entry door and went outside and shouted, “robbery.” The man jumped outside the drive-through window and fled. He was unable to take any money. A surveillance video from the Vallejo Cleaners on the day of the robbery was played for the jury.

5. Investigation

Officer Jared Jaksch investigated the robberies. He retrieved surveillance videotapes from Meadows Video, Metro PCS, and Vallejo Cleaners related to the robberies. Jaksch recognized defendant as the man with the gun in the videotape from Vallejo Cleaners. He also put together a photographic lineup and showed it to Fronda, Veronica and Laura Betanzos, and Ramirez.

On March 17, 2012, Jaksch was on patrol duty in the vicinity of the City Hall Library when he saw defendant wearing a black hooded sweatshirt. Defendant appeared to be avoiding him. Jaksch approached defendant and asked to speak with him. Defendant made a motion toward his waistband. Jaksch pulled out his gun, pointed it at defendant, and told him to get on the ground. Defendant fled, and Jaksch pursued him. Defendant was arrested. He had two tear drop tattoos below his left eye.

Jaksch also testified that a semi-automatic gun can be racked, making a distinctive sound. After the videotape of the Metro PCS was played for the jury, Jaksch testified that you could hear the robbery suspect racking the gun. When a gun is racked, it makes a clicking noise. The police recovered a Walther black semi-automatic .22 caliber handgun from behind the motel in which defendant was staying.

Defendant testified and denied any involvement in the robberies. He also denied ever carrying weapons. He did not know any of the victims and had never seen them previously. On December 13 and 22, 2011, he was likely at home with his son. On the evening of December 22, 2011, he could have been out shopping with his son. On January 4, 2012, he was in Pittsburgh with Terry Kyle.

II. SUPPLEMENTAL BRIEF

In his supplemental brief, defendant argues that the trial court erred in not suppressing a photographic lineup. The trial court properly denied the motion, finding that the individuals in the lineup had similar features including hair and, for some of the individuals, facial tattoos. Defendant also appears to argue that the physical lineup was unduly suggestive because Veronica Betanzos, although picking him out of the photographic lineup, was unable to identify him in a physical lineup. Defendant did not make this argument below, and has therefore forfeited it. Nonetheless, the physical lineup was conducted two years after the robbery while the photographic lineup was held within days of the robbery. The issue of Veronica Betanzos's credibility was one for the jury.

Defendant also argues that the record shows juror bias during voir dire. We have reviewed the transcript of the hearing on this issue. After the court questioned the juror in chambers, the juror denied making the statement allegedly showing bias and the parties appeared satisfied with his remarks. The deputy district attorney offered to stipulate to release the juror because the juror worked the night shift and would not be paid for his jury service. Defendant did not agree to the stipulation. The record reveals no evidence supporting a finding of juror bias.

Defendant further contends that he was not advised of his right to counsel at a court-ordered live lineup. At the time of the lineup, defendant had exercised his right of self-representation; he was not entitled to counsel.

III. WENDE REVIEW

The court properly instructed the jury which found defendant guilty of the charged offenses.

In a bifurcated proceeding, the trial court found true the allegations that defendant suffered two prior prison convictions.

On May 12, 2014, the court, having read and considered the probation report, sentenced defendant to the aggregate term of 45 years in state prison. The court granted defendant custody credits of 430 days. There was no error in the sentencing.

This court has reviewed the entire record and there are no meritorious issues to be argued.

IV. DISPOSITION

The judgment is affirmed.

Rivera, J.

We concur:

Ruvolo, P.J.

Streeter, J.